Midwest Region Blood Services, an affiliation of the American Red Cross *and* General Drivers & Helpers Local Union No. 554 affiliated with the International Brotherhood of Teamsters, AFL–CIO. Cases 17–CA–18719 and 17–RC–11370

August 8, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On March 25, 1997, Admininstrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in response.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that Midwest Region Blood Services, an affiliation of the American Red Cross, Omaha, Nebraska, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the election held on July 11, 1996, in Case 17–RC–11370, is set aside and that this case is severed and remanded to the Regional Director for Region 17 for the purpose of conducting a new election.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We adopt the judge's conclusion that the Respondent engaged in objectionable conduct and violated Sec. 8(a)(1) by announcing on the day before the election a new policy providing that employees would receive a 2-percent yearend bonus based on areawide performance. In so doing, we draw an inference of interference with employee free choice from all the evidence presented and the Respondent's failure to establish a legitimate reason for the timing of its announcement. *Speco Corp*., 298 NLRB 439, 439 fn. 2 (1990), and case cited therein.

Lyn Buckley, Esq., for the General Counsel.
Soren Jensen, Esq. (Erickson & Sederstrom), of Omaha, Nebraska, for the Respondent.
M. H. Weinberg, Esq. (Weinberg and Weinberg, P.C.), of Omaha, Nebraska, for the Charging Party.

BENCH DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on February 19, 1997, in Omaha, Nebraska, pursuant to an order issued by the Regional Director for Region 17 of the National Labor Relations Board (the Board) consolidating Cases 17–CA–18719 and 17–RC–11370. The complaint is based on a charge filed by General Drivers & Helpers Local Union No. 554 affiliated with the International Brotherhood of Teamsters, AFL–CIO (the Charging Party or the Union) on July 15, 1996, alleging that Respondent, Midwest Region Blood Services, an affiliation of the American Red Cross (the Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by announcing a wage increase to employees in the bargaining unit[1] in a Board election, the day prior to the date of the election in order to influence the outcome of the election. The election was held on July 11, 1996, and was conducted pursuant to a Decision and Direction of Election issued by the Regional Director for Region 17 on June 13, 1996. The revised tally of ballots shows there were approximately 47 eligible votes, 20 of whom cast ballots for, and 21 against union representation. There were no void ballots and there were two sustained challenges. On November 15, 1996, the Union filed timely objections to the election. The objections are based on the announcement 1 day before the election of a 2-percent yearend performance bonus for the Western area (which includes Respondent) of the American Red Cross operation. The Respondent has by its answer filed on December 23, 1996, denied the commission of any unfair labor practice. The Respondent also contends that the announcement had no effect on the election.

I issued a bench decision in this case at the hearing on February 19, 1997, pursuant to Section 102.35(a)(1) of the Board's Rules and Regulations on the entire record in this proceeding including my observations of the witnesses who testified here, and after due consideration of the authorities cited and the closing arguments made by the parties. In accordance with Section 102.45 of the Board's Rules and Regulations, I certify the accuracy of, and attach hereto as ''Appendix A'' the pertinent portion (pp. 252–271) of the trial transcript as noted and corrected by me.

FINDINGS OF FACT

I. JURISDICTION

A. *The Business of Respondent*

Respondent Midwest Region Blood Services, an affiliate of the American Red Cross, maintains an office and place of business in Omaha, Nebraska, where it is engaged in the collection, processing, and distribution of blood and related matters and is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

[1] All full-time and regular part-time mobile unit assistant I and II's, mobile unit supply clerks, donor services technicians I and II's, and donor specialist I's employed by the Employer in its collection department, at its facilities located in Omaha, Nebraska, but EXCLUDING office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

B. *The Labor Organization*

The Union is a labor organization within the meaning of Section 2(5) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by its announcement of a wage increase the day prior to the election scheduled for July 11, 1996, among Respondent's employees in the following appropriate unit:

> All full-time and regular part-time mobile unit assistant I and II's, mobile unit supply clerks, donor services technicians I and II's, and donor specialist I's employed by the Employer in its Collection department, at its facilities located in Omaha, Nebraska, but EXCLUDING office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

4. The above unfair labor practice in connection with the business engaged in by Respondent has the effect of burdening commerce within the meaning of Section 2(2), (6), and (7) of the Act.

THE REMEDY

Having found that the Respondent has violated the Act, it shall be ordered to cease and desist therefrom, to take certain affirmative actions including the posting of an appropriate notice designed to effectuate the purposes of the Act as set out in the attached transcript (Exh. A). The notice is attached as Exhibit B.

The Objection to the Election

I find that the objection to the election should be sustained and the election held on July 11, 1996, should be set aside and a second election be conducted by secret ballot among the employees in the appropriate unit and that Case 17–RC–11370 be transferred to the Regional Director for Region 17 for the setting of a second election at such time and place as the Regional Director deems appropriate.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Midwest Region Blood Services, an affiliate of the American Red Cross, Omaha, Nebraska, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Announcing a wage increase in order to dissuade its employees in the aforesaid appropriate unit from selecting General Drivers & Helpers Local Union No. 554 affiliated with the International Brotherhood of Teamsters, AFL–CIO as their collective-bargaining representative in a Board election.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post copies of the attached notice marked ''Appendix B.''[3] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 17–RC–11370 is transferred back to the Regional Director for Region 17 for the setting of a second election by secret ballot among Respondent's employees in the aforesaid appropriate unit at such time and place as he deems appropriate.

APPENDIX A

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substantial showing of anti-union animus in this case.

There is, what happened is an individual not trained in labor relations matters, with having a habit of providing information quickly to her employees, not thinking this had anything to do with the election or the union organizing drive, not thinking it had anything to do with being frozen, did what she always did and always does. She got the information and it was late, and she got it, and she passed it on to the employees under her supervision, which was her practice.

There was no intent to interfere with the election, no intent to influence the vote. It was done automatically and done without malice. And I believe the burden of proof on the General Counsel to—is to prove that she acted with that kind of intent, and there is not that evidence in this record.

ADMINISTRATIVE LAW JUDGE CULLEN: All right. We will go off the record.

(Off the record.)

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

ADMINISTRATIVE LAW JUDGE CULLEN: We're on the record. All right Ladies and Gentlemen, I am going to issue a bench decision in this case as I previously advised counsel, upon the entire record in this proceeding including my observations of the witnesses who testified and after a review of the exhibits presented, and the arguments, trial memorandum and trial briefs presented by the parties, I'm going to make the following Findings of Fact and Conclusions of Law. The following will

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include a composite of the credit testimony and exhibits presented at the hearing. Jurisdiction in this case is uncontested.

The complaint alleges the Respondent admits, and I find that all times material herein the Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the union has been a labor organization within the meaning of Section 2(5) of the Act.

I find that Joan B. Manning, chief executive officer of Respondent's Midwest Blood Region, and Richard LeGrand, area vice president of the Western Region of the ARCBS, are and have at all times been supervisors within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act. And with respect to these cases, Case 17–CA–18719 is the complaint case, and No. 17–RC–11370 is the representation case, and they were consolidated by the Acting Regional Director of Region 17 of the National Labor Relations Board on December 16th, 1996.

The complaint in case No. 17–CA–18719 was issued on July 15th, 1996 and is based on a charge filed by the General Drivers and Helpers, Union Local No. 554 affiliated with International Brotherhood of Teamsters, AFL–CIO. The complaint alleges that Respondent violated Section 8(a)(1) of the Act by announcing the implementation of a new performance plan providing for a conferral of increased benefits upon employees

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one day before a scheduled board election.

On April 29th, 1996 a petition was filed by the union with the National Labor Relations Board for an election of certain of Respondent's employees. An election by secret ballot was conducted on July 11th, 1996 among the employees in the following appropriate unit. ''All full-time and regular part-time mobile unit assistant I and II's, mobile unit supply clerks, donor services technicians I and II's and donor specialist I's employed by the employer in its Collections Department, at its facilities located in Omaha, Nebraska, but excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.''

The election had been, was conducted pursuant to a decision and direction of election which was issued by the Regional Director of Region 17 on June 13th, 1996. The revised tally of ballots shows that there were approximately 47 eligible voters, 20 of whom casts ballots for, and 21 against union representation. There were no void ballots and there were two sustained—and two sustained challenges.

On November 15th, 1996, the Union filed timely objections to the elections. The objections are concerned with the announcement of a two percent year end bonus for a Western Area performance one day before the scheduled election. Specifically the objection to the election cites the July 11th,

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1996 election and asserts that on July 10, 1996 the Employer unilaterally implemented and promised a wage increase, which is a benefit at the time of the election, when the Employer had refused previously to implement significant wage increases.

The objection asserts that the Employer proposed to the employees a new ''employee incentive program'' for additional compensation, a totally new program never promised before which benefits were promised by the Employer during an organizational campaign, in an attempt to defeat or chill the organizational campaign. In its answer, the Respondent admits the distribution of the July 10, 1996 memorandum to employees, but denies it was ''necessarily'' a ''new'' plan or that it ''necessarily conferred increased benefits upon employees.'' Respondent otherwise denies the complaint allegations contained in paragraphs six and seven of the complaint, and each allegation not heretofore specifically admitted.

Respondent further states in its answer that the aforesaid memorandum was distributed to all employees of the Midwest Region and not just to members of the proposed bargaining unit and the information contained in the memorandum was distributed following receipt of a information memorandum from the Western Region of American Red Cross Blood Services. Respondent further denies that the memorandum in any way interfered with or had any effect on the election and specifically denies that publication of the memorandum in any way violated any provision

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of the Act.

At the hearing the General Counsel called the following witnesses who testified as follows. The first witness called was Joan Manning. She is the CEO of the Midwest Region of the American Red Cross and has held that position since January 1995. Between January and March of 1995 she was in this position as the acting principal officer.

She was examined by the General Counsel pursuant to Rule 611(c). She testified that she oversees operations of all aspects of the Midwest Blood Region. She oversees personnel, pay, changes in pay, and various changes in pay and handles personnel questions including questions concerning the union and the organizational campaign and was involved in preparation of campaign material when Respondent sought to defeat the union campaign, and signed letters to employees.

She testified the Midwest Region does the collection, processing and distribution of blood and—and employs approximately 300 employees. Within the unit, there were—there were approximately 43 to 47 employees according to her testimony. In mid-March of 1996 she became aware of the union campaign. She received a letter from the Teamsters local here involved dated March 13th, 1996. She doesn't recall the exact date, but she did receive the letter on or about the 14th, I believe she stated.

All right. She also received a letter April 2nd and on

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3/11 a memo—she—she identified a memo scheduling meetings of employees for 3/13. This, however, was the first time she—she had seen this particular memorandum, according to her testimony. She was, however, in charge of labor relations at the time of the issuance of the March 11th memorandum.

She acknowledges there were meetings conducted on March 13th, but contended she did not know anything about these particular meetings and was not present. She did not recall a meeting on March 15th. On April 5th she sent out a letter to employees concerning the union campaign.

She acknowledged that during the campaign, the Respondent brought to the employee's attention the question of strikes and of the permanent replacement of employees. She acknowledges that the Respondent sought to defeat the union campaign or the campaign to organize the union's employees.

She acknowledges that legal consultants were used by the Midwest Region in the anti-union campaign. Her staff received advice in writing letters. Letters were occasionally sent to attorneys at the National headquarters. In addition, there were local attorneys involved in representing the Respondent. Attorneys' fees for the campaign, she paid the local attorney and consulted him on these matters. She is not sure who paid the National American Red Cross attorneys. She did not pay this attorney, but did utilize his services.

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By way of background, she testified on examination by the General Counsel that in June and July of 1995 the American Red Cross decided that changes and cuts were necessarily because the American Red Cross had lost approximately $113 million in the previous year. All sections of the Biomedical Services including her function were being asked to cut expenses. She directed a memo to employees dated June the 21st, 1995 which discussed the expense reductions and the consequences that were to follow. Layoffs took place approximately July 1st, 1995.

She acknowledged that on July 10th she sent a memorandum to employees, that is July 10th of 1996, announcing a two percent bonus. This was the day before the election scheduled on July 1th, 1996. She testified that she learned of approval of the plan on July the 9th, which was in a memorandum directed by Richard LeGrand, the senior vice president of the Western Area.

She subsequently received a more detailed description of the bonus program after the July 11th election. A meeting was held in August 1996 with employees apprised of the details of his bonus.

G.C. No. 12(a) is an August 1996 newsletter of the Respondent stating that meetings were being held, staff meetings on August 1, 2, 5 and 16, to discuss the new incentive plan. She conducted these meetings and gave employees a detailed description of the two percent salary bonus at these

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meetings.

Dropping back to February 23rd, 1996 with respect to the budget, she learned of a two percent across the board increase but this is a separate element of the Respondent's compensation Plan, and the two percent bonus was not part of the budget guidelines of February 1996. She did not announce the two percent across the board increase the day after she learned of it. Rather, it was conveyed subsequently by Jim Ross, the senior vice president of the Biomedical Services on February 28th at a meeting of unit employees.

She was told, however, to budget for the two percent increase, but did not receive approval for that increase, that is, the across the board increase until April of 1996. According to her testimony, Ross announced at the February 78th, 1996 meeting that he believed there would be a merit increase, but she does not recall him specifically saying it would be two percent.

However, in her supplemental affidavit dated September 27, 1996 she stated that he, Ross, told employees about the two percent wage adjustment. She acknowledged that a few days had lapsed between her receipt of information of the 1995 Reduction in Force and staff, and various cuts and her announcement to the employees.

On July 9th 1996 she received the information with respect to

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the bonus and this was to be a year end bonus. That, of the fiscal year commencing July 1, 1996 and ending July 1, 1997. This bonus has not yet been issued, and it has not yet been determined as to the amount of the bonus and Respondent will not be able to do so until July 1, 1997 after the end of the fiscal year.

She is not aware whether or not employees were informed concerning the target figure. She does not recall sharing this information with them. She acknowledged in cross examination that the two percent bonus will not be paid if there is a downturn in Red Cross fortunes which sets off a trigger causing a reduction in expenses.

She testified she discussed various matters with LeGrand two to four times a week and kept him advised of the organizing campaign that occurred in 1996. On July 1, 1996 the employees received the two percent pay increase, which was the across the board increase, which was not here in question as a possible violation by the board.

Richard LeGrand testified he is the vice president of the Western Area for Blood Services of Red Cross. He testified he passed on to the CEO's of the eight regions which report to him and are under his area of supervision the changes made by the National office. On July 9th he received approval for the Bio-Share Program including the two percent bonus. The July 9th memo gave no indication or no instructions one way or

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the other to the CEO's as to when they could or should announce, make this announcement or pass this announcement on to employees.

In his affidavit he stated that by June 30th he had not received approval of the corrected recommendations following a meeting of June 21st at the National headquarters concerning this program. Targets had no been approved prior to July 9th on which date he received the notification from the National Office in Washington. In his July 9th memorandum he stated he would be contacting the CEO's within the next 10

days, with the information, which could then be disseminated to the employees.

On July 17th he faxed all of the regional and area targets to all CEO's through his chief financial officer. He acknowledged that the two percent year end bonus for July 1, 1996 to '97 period has not yet been paid and it has not yet been calculated, and acknowledged also that if the target were set too high, the bonus would not be paid.

He stated his policy is that unions are not necessary and this policy is in effect for the Western Area under his supervision. He testified also that the National Office attorney advised Manning with respect to the union organizational campaign. He testified further that consultants regarding the union were not paid by his area budget and that these payments were made either on a national

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or regional level. He was aware there was an organizing campaign in the Midwest Region probably in March of 1996.

He was aware of Manning's programs with respect to the conduct of Respondent's answer to the union campaign. There was no directive made to the CEO's to disseminate the Bio-Share Program by any certain day. It was left up to the CEO's as to how and when to disseminate. He did not advise Manning of how to conduct the union campaign, and this was left up to Manning as it would be with respect to all other CEO's.

General Counsel also called Dennis Warner, who is a rank and file employee within the appropriate unit so stated above. He is a mobile unit assistant in Collections and has been in the Collections Department since 1994. He testified that the pay policy when he came on board was a pay for performance program at the time he started as an employee.

He testified that in early 1996 the region experienced a wage compression within the mobile unit, and that the assistants in that department and the Collections Department were affected. This caused dissatisfaction among these employees and they submitted grievances to Respondent. There was a walk out also in February of 1996. It ended and all the employees returned to work.

They received a letter from Kathleen—

MR. WEINBERG: Sullivan.

ADMINISTRATIVE LAW JUDGE CULLEN:—Nicolini, the Human

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Resources representative answering the various grievances. After these occurrences, the employees contacted the AFL–CIO and sought union representation and the organizing campaign was begun. He identified General Counsel's Exhibit No. 10(a), which was a March 11th, 1996 announcement by Kathleen Sullivan, the Collections Department Respondent, setting the March 13th meeting with respect to the union campaign.

Warner testified he did not know of the two percent bonus prior to July 10th, 1996, the day before the election, and that a two percent bonus for him would mean approximately an additional $300 to $350 depending on the hours that he worked. At the time he received the notification, he also found in his mail, in his personal mailbox a—an anti-union memorandum prepared by Respondent in answer to the union campaign. And this was on July the 10th, 1996.

In its case, the Respondent recalled LeGrand who testified he dismissed regional targets with the CEO in the budget review process. He never announces specifics of a plan until he has them in his hand. He testified concerning the difference between the July 9th approval and the July 17th, which was a dissemination of information in a format of detailed data.

Joan Manning was also recalled and identified a number of exhibits which were received in evidence, and was asked why she had distributed LeGrand's memo on 7/10/96. And she testified

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that she viewed it as part of the overall employee performance program and the program applied to all 300 employees under the auspices of the Midwest Region, and not merely the employees in the unit. She testified further that she did not consult anyone with respect to whether or not to issue the memorandum to the unit employees.

In her closing statement, the General Counsel argues that this was a new employee benefit. It was given the day before, or announced the day before the election. It was not necessary to do so, and she points to testimony and evidence that in six of the other seven regions the announcement was not made until much later and that what had led to the union campaign was that on June 19, 1995, there were layoffs. There were—there was a decrease and an elimination with respect to certain fringe benefits, and that in February of 1996, the employees submitted grievances, engaged in a walk out and finally turned to the union. The campaign was intense and the Respondent took a strong position against union organization of its employees.

As part of that, the Respondent interviewed employees and this is relying on the testimony of Mr. Warner. And she cites board cases with respect to the employer, a board case with respect to the employer being flash frozen in time as to an election so that the employer is prohibited from awarding any benefits or doing anything or making promises or announcing

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benefits that it had not given prior to the critical period before the election.

The Charging Party argues that as the announcement of the two percent raise was made the day before the election and not to take effect until July of 1997, it was premature, and at that time, the target date had not been announced. Additionally, the Charging Party notes that this was a discretionary bonus. And in cases involving a discretionary bonus, the law is clear that the Respondent must come forth with a business reason for doing so because it was not necessary that it be issued.

And that in this instance, the Respondent violated Section 8(a)(1) of the Act Charging Party's counsel cites various cases with respect to to timing and the overall effect on the election process.

The Respondent contends that the General Counsel has the burden in this case and—and that she must show that Manning had an intent to interfere with the election and must also show that the conduct complained of actually had an ef-

fect on the election. He argues also that the compensation program was nine or 10 days overdue and the program was actually retroactive to July 1 which he would contend further justifies the announcement on July 10th, the day before the election.

All right. My analysis, I find that the Respondent did

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violate Section 8(a)(1) of the Act by the issuance of the July 10, 1996 memorandum to the unit employees. As the General Counsel and the Union contend, its was not necessary for the Respondent to issue the July 10th memorandum on July 10, 1996 one day prior to the election.

There is no dispute that the original memorandum of July 9 from Vice President LeGrand of the Western Area to Respondent's CEO's was done in the normal course of the business, and the General Counsel does not allege a violation by the issuance of this particular memorandum. But there has been no showing by Respondent that it was necessary to issue the July 10th memorandum to employees on that date. It is undisputed that CEO Joan Manning was aware of the imminent election set for July 11th when she issued the July 10th memorandum to the unit employees.

I find it was apparent that the issuance of this memorandum had the tendency to have an effect on the outcome of the election and should have been apparent to Manning who was admittedly being advised by counsel. Whether she chose to ignore advice or chose to act on her own as she testified, she certainly was on notice that there was a union campaign involved and had been previously advised by counsel.

I do not find credible her testimony that she did not consider this to have any possibility of effect on the election and did not consider whether, in fact, it did or not.

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It is obvious to me that a two percent bonus would have the inevitable effect of convincing employees that all good things flowed from the employer's generosity and conversely that this largess could be cut off if the employer chose to do so.

I do not find that the Respondent has shown any business necessity whatsoever for the announcement of the bonus on July 10th one day before the election rather than waiting until after the election was held. This, with respect to the election itself, this is a very close election. Two votes in the other direction would have changed the outcome and I find that the timing involved here inherently had the tendency to affect the election and that the election should be set aside and the case referred to the Regional Director for further processing and resetting the election at a time and place to be determined by the Regional Director following the remedying of the violation found in this case.

I find the cases cited by the General Counsel and the Charging Party herein are relevant. Some cases—and I may list some others in the more formalized opinion when I issue this opinion in its entirety upon receipt of transcript, but some of the cases relied on by me in this case are *NLRB v. Exchange Parts Co*., 375 U.S. 405, 1964, that's a Supreme Court case. And the discussion with respect to this opinion by Justice Harland wherein he stated:

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> ''The danger inherent in well-timed increases and benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.''

General Counsel also cites *Comcask Cablevision* and that is 313 NLRB 220, a 1993 case wherein the Administrative Law Judge with Board approval found that whether amounts of increases were manipulated to affect the results of that particular election is the issue. And if so, a violation of Section 8(a)(1) is established, even if some wage increases have been called for at the time.

This is because an employer is obliged to carry out his wage setting practices during a union campaign in the same manner it would have done in the absence of the campaign. And the Administrative Law Judge states further that manipulating amounts of otherwise scheduled wage increases has an unlawfully coercive effect even here the increases are as little as two percent of base wages.

See also *Sears Roebuck and Company*, 305 NLRB 193, 195 (1991), *Southgate Village*, 319 NLRB 220, 248–250 (1993), and *Speco Corp*., 298 NLRB 439 (1990).

Some additional cites by the Charging Party follow the timing of the decision and the timing of the announcement are crucial citing *NLRB v. Rexall Chemical*

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Company, 418 F.2d, 603, Fifth Circuit, 1969. And *NLRB v. Style Tech*, 520 F.2d 275, Fifth Circuit, 1975, and *NLRB v. Commercial Letter, Inc*., 455 F.2d 105, 111–112, Eighth Circuit, 1972, *J. C. Penny Company, Inc. v. NLRB*, 384 F.2d 479, Tenth Circuit, 1969. And *Des Moines Glove Company and Butcher Workmen*, 146 NLRB No. 24, 1964.

All right. *Conclusions of law*, One, The Respondent is an employer within the meaning of Section 2(2), (6) and (7) and of the Act. Two, Respondent violated Section 8(a)(1) of the Act by announcing the implementation of a wage increase on the day prior to the scheduled election before the National Labor Relations Board for employees in the above described unit.

This unfair labor practice, in connection with the business of Respondent engaged in by the Respondent, has the effect of burdening commerce within the meaning of Section 2(2), (6) and (7) of the Act. The *Remedy* having found that Respondent violated the Act, I recommend that Respondent cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes and policies of the Act including the posting of an appropriate notice.

Upon return to my office and following the receipt of transcript, I will issue a formal decision shortly thereafter upon receipt of the transcript and exhibits in this case and will incorporate these transcript pages which I am now

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dictating herein into the body of the decision. I may make corrections to these transcript pages for purposes of grammar and/or anything substantive that I may have missed in here,

or may not have covered, but this decision should stand in virtually the same form as I have given it today.

With respect to the election, I find the election should be set aside and Case 17–RC–11370 should be referred to the Regional Director for Region 17 of the National Labor Relations Board for his determination to set another election at a time and place when a fair election can be held following the remedying of the unfair labor practice found in this case. I find that the objection to the election should be sustained and the election should be set aside as the unfair labor practice as found above by the announcement of the increase in wages by Respondent the day prior to the scheduled election occurred during the critical period and destroyed the laboratory conditions required to insure a fair election in this case.

All right. Exceptions will run from the time I issue my formal decision in this case. Is there anything further before I close the record in this case?

MR. JENSEN: No.

MS. BUCKLEY: No.

MR. WEINBERG. No.

ADMINISTRATIVE LAW JUDGE CULLEN: All right. The record is now closed.

Whereupon, the proceedings were concluded at 7:00 p.m.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY THE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid and protection

To choose not to engage in any of these concerted activities

WE WILL NOT announce increases in wages during the critical period prior to a scheduled election in order to dissuade our employees in the following appropriate unit from selecting the General Drivers & Helpers Local Union No. 554 affiliated with the International Brotherhood of Teamsters, AFL–CIO as their collective-bargaining representative.

All full-time and regular part-time mobile unit assistant I and II's, mobile unit supply clerks, donor services technicians I and II's, and donor specialist I's employed by the Employer in its Collection department, at its facilities located in Omaha, Nebraska, but EXCLUDING office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

MIDWEST REGION BLOOD SERVICES, AN AFFILIATION OF THE AMERICAN RED CROSS